

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**CORNELIUS MAHAR and  
MAUREEN MAHAR,**

**Plaintiffs,**

**1:06-cv-1297  
(GLS\RFT)**

**v.**

**US XPRESS, INC. and  
GLORIA V. MORGAN,**

**Defendants/Third-Party Plaintiffs,**

**v.**

**POLSINELLO FUELS, INC.,**

**Third-Party Defendant.**

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**APPEARANCES:**

**OF COUNSEL:**

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**Gary L. Sharpe**  
**District Court Judge**

**MEMORANDUM-DECISION AND ORDER**

On February 24, 2010, this court ruled on, among other things, a series of summary judgment motions filed by the plaintiffs, defendants, and third-party defendant. (See Dkt. No. 147.)<sup>1</sup> Third-party defendant, Polsinello Fuels, Inc., subsequently filed a letter on March 1, notifying the court of its failure to address the portion of Polsinello's motion for summary judgment concerning US Xpress's claim that Polsinello failed to operate, inspect, maintain, and repair its tractor-trailer in accordance with the applicable federal and New York State laws and regulations. (See Dkt. No. 150.) Upon review of Polsinello's original motion, US Xpress's response

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<sup>1</sup>The court's previous Memorandum-Decision and Order is also available at *Mahar v. U.S. Xpress Enters., Inc.*, --- F. Supp.2d ----, No. 1:06-cv-1297, 2010 WL 681342 (N.D.N.Y. Feb. 24, 2010).

papers, Polsinello's reply papers, and the underlying record, it appears that there is no evidence supporting such a claim and that US Xpress has implicitly conceded and abandoned the claim. (See Def. Resp. Mem. of Law at 14-16, Dkt. No. 131:3; see *also* Polsinello Reply Mem. of Law at 1-2 & n.2, Dkt. No. 136:1.) In addition, US Xpress has offered no response to Polsinello's letter. Accordingly, the court grants Polsinello's summary judgment motion regarding US Xpress's claim that Polsinello failed to properly operate, inspect, maintain, and repair its tractor-trailer.

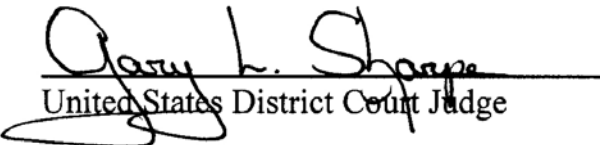
**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that Polsinello's motion for summary judgment (Dkt. No. 111) is **GRANTED** insofar as US Xpress's claim for Polsinello's failure to operate, inspect, maintain, and repair its tractor-trailer in accordance with federal and state law and regulations is **DISMISSED**; and it is further

**ORDERED** that the Clerk provide a copy of this Memorandum-Decision and Order to the parties.

**IT IS SO ORDERED.**

March 11, 2010  
Albany, New York

  
United States District Court Judge